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ARBITRATION AND MEDIATION AS A MECHANISM TO SETTLE
CORPORATE DISPUTE IN BANGLADESH

MD MAMONOR RASHID (815250)

Thesis Submitted to the Ghazali Shafie Graduate School of Government,
College of Law, Government and International Studies in fulfillment of the
requirement for the Degree of Master of Laws
Universiti Utara Malaysia
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ABSTRAK


Kata kunci: Timbang tara, pertikaian korporat, litigasi, mediasi
ABSTRACT

This study examines the mechanism of arbitration and mediation to settle corporate disputes in Bangladesh. This study intends to create awareness among the Bangladeshi corporations of the importance of addressing arbitration and mediation to settle corporate disputes. Currently there are around 2.3 million backlog of cases pending in the courts of Bangladesh. It is extremely crucial to clear off these backlog of cases, but so far the courts are unable to provide a satisfactory settlement of the cases, causing endless suffering to the litigants. The objective of this study is to examine the role of arbitration and mediation in providing alternative mechanisms to settle corporate disputes in Bangladesh. This study analyses the provisions of laws specially the Arbitration Act 2001, and the Code of Civil Procedure 1908 regarding arbitration and mediation in Bangladesh. The data of this study was analyzed through the historical, analytical, philosophical and comparative approaches. The findings show that the arbitration and mediation mechanisms provide the following positive characteristics: quicker, convenient, confidential, less procedural, cost effective and enforceable by the court; on the other hand, extensive delay, huge costs, harassment of the parties and the huge backlog of cases that could lead corporate or commercial parties not to go to the courts were negative. The study concludes that the use of the arbitration and mediation mechanisms is the preferred way to settle corporate or commercial disputes in Bangladesh. However, implementation of the arbitration and mediation mechanisms to settle corporate disputes in Bangladesh can only be successful if there is sufficient government support and regulation, professional ethics, relevant training and facilities.

Keywords: Arbitration, corporate dispute, litigation, mediation
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TABLE OF CONTENTS

PERMISSION TO USE i
ABSTRAK ii
ABSTRACT iii
ACKNOWLEDGEMENT iv
TABLE OF CONTENTS v
LIST OF TABLES ix
LIST OF ABBREVIATIONS x

CHAPTER ONE INTRODUCTION 1
1.1 Background of the Study 1
1.2. Problem Statement 4
1.3 Research Questions 7
1.4 Research Objectives 8
1.5 Significance of the Study 8
1.6 Research Methodology 9

1.6.1 Research Design 10
1.6.2 Research Scope 10
1.6.3 Types of Data 10

1.6.3.1 Primary Data 11
1.6.3.2 Secondary Data 11

1.6.4 Data Collection Methods 11
1.6.5 Analysis of Data 12
1.7 Limitations of the Study 13
1.8 Literature Review

1.8.1 Definition of Operational Terminologies

1.8.1.1 Arbitration

1.8.1.2 Mediation

1.8.1.3 Litigation

1.8.1.4 Corporate Dispute

1.8.2 The Concept of Corporate Disputes relating to Corporate Governance and the Current Practice of Arbitration and Mediation Mechanisms for Resolving Disputes

1.8.3 Development of Arbitration and Mediation Mechanisms in Settling Corporate Disputes

1.8.4 Development of Arbitration and Mediation in Statutory Laws of Bangladesh

1.8.4.1 The Code of Civil Procedure, 1908 (Bangladesh):

1.9 Outline of the Chapters

CHAPTER TWO  THE ROLE OF ARBITRATION MECHANISM IN SETTLING CORPORATE DISPUTES IN BANGLADESH

2.1 Introduction

2.2 Concept of Arbitration

2.2.1 International Recognition of Arbitration Award

2.2.2 Ad Hoc or Institutional Arbitration

2.2.2.1 Ad hoc Arbitration

2.2.2.2 Institutional Arbitration

2.3 Bangladesh International Arbitration Centre (BIAC)
2.4 Theoretical Advantages of Arbitration against Litigation 45
2.5 The Role of Arbitration Mechanism in settling Corporate Disputes in Bangladesh 52
2.6 The Arbitration Act, 2001 59

2.6 Summary of the Chapter 64

CHAPTER THREE THE ROLE OF MEDIATION MECHANISM IN SETTLING CORPORATE DISPUTES IN BANGLADESH 60
3.1 Introduction 60
3.2 Theory of Mediation 60
3.2.1 Definition and Concept 61
3.2.2 Flexible Language and Convenient Environment 62
3.3 The Mediation Mechanism and its Role in Settling Corporate Disputes in Bangladesh 63
3.3.1 Expansion of Mediation in Different Countries 71
3.3.2 The Role of Mediators and Lawyers in settling Corporate Disputes in Bangladesh 73

3.4 Summary of the Chapter 75

CHAPTER FOUR THE PROVISIONS OF ARBITRATION AND MEDIATION MECHANISMS IN STATUTORY LAWS OF BANGLADESH 77
4.1 Introduction 77
4.2 The role of Laws, Access to Justice and ADR 77
4.3 Critical Analysis of Bangladeshi Laws Relating to Arbitration and Mediation 80
4.3.1 Arbitration 80
4.3.2 Preliminary Relief and Interim Measures 81
4.3.3 Evidentiary Matters

4.3.4 Arbitral Award by the Arbitral Tribunal

4.3.6 Mediation

4.4 Summary of the Chapter

CHAPTER FIVE  CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

5.2 Recommendations

Bibliography
LIST OF TABLES

Table 1  Backlog of Civil Cases in Bangladesh 2012  5
Table 2  The Difference between Arbitration and Litigation  51
Table 3  Comparison between Mediation and Court Procedures  67
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CalPERS</td>
<td>California Public Employees' Retirement System</td>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<tr>
<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
</tr>
<tr>
<td>CPC</td>
<td>Code of Civil Procedure</td>
</tr>
<tr>
<td>CrPC</td>
<td>Code of Criminal Procedure</td>
</tr>
<tr>
<td>BIAC</td>
<td>Bangladesh International Arbitration Center</td>
</tr>
<tr>
<td>CPR</td>
<td>Conflict Prevention and Resolution</td>
</tr>
<tr>
<td>CERD</td>
<td>Centre for Effective Dispute Resolution</td>
</tr>
<tr>
<td>ACAS</td>
<td>Advisory Conciliation and Arbitration Service</td>
</tr>
<tr>
<td>NJC</td>
<td>Neighborhood Justice Center</td>
</tr>
<tr>
<td>IACA</td>
<td>Indian Arbitration and Conciliation Act</td>
</tr>
<tr>
<td>BIT</td>
<td>Bilateral Investment Treaty</td>
</tr>
<tr>
<td>ICSID</td>
<td>International Center for Settlement of Investment Disputes</td>
</tr>
<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
</tr>
<tr>
<td>DCCI</td>
<td>Dhaka Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>MCCI</td>
<td>Metropolitan Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>BICF</td>
<td>Bangladesh Investment Climate Fund</td>
</tr>
<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<td>CMC</td>
<td>Civil Mediation Center</td>
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<td>MLAA</td>
<td>Madaripur Legal Aid Association</td>
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<td>BLD</td>
<td>Bangladesh Legal Decisions</td>
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</tbody>
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CHAPTER ONE
INTRODUCTION

1.1 Background of the Study

Corporate disputes and conflicts are normal occurrence in business setting. Some of them are unavoidable but the system they are managed may have tremendous brunt on the effectiveness and possibility of business.¹ Badly dealt with conflict can be costly, create uncertainty in business and humiliate decision quality by managers.

The practice by which corporations are bound for and managed can be matter of standards and rules fixed in the legal system, corporate governance frameworks and companies' memorandum and articles of association. These processes are intended to help companies obtain optimum benefit in business, avoid trouble and diminish the overheads of assets by guaranteeing shareholders and creditor's rights that they might be able to get a flaxen return on their venture.² Furthermore, the companies have to follow some standard rules and mechanisms to settle the disputes with no troubles so that investors can place reliance on the loyalty of companies' rules and their officers.

When a dispute occurs in a company, it can be the top benefit of the company to resolve the disputes successfully, professionally and competently. Corporate disputes can range from disagreement between any shareholder and the Board of

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